

NOT DESIGNATED FOR PUBLICATION
ARKANSAS COURT OF APPEALS

DIVISION III

No. CA 07-976

MYRON LANCE

APPELLANT

V.

CATHY SCOTT

APPELLEE

Opinion Delivered MARCH 19, 2008

APPEAL FROM THE POLK COUNTY
CIRCUIT COURT,
[NO. CV-06-161]

HONORABLE JERRY WAYNE
LOONEY, JUDGE

AFFIRMED

JOHN B. ROBBINS, Judge

Appellant Myron Lance and appellee Cathy Scott own adjacent cattle farms in Polk County. Prior to the spring of 2004, the parties shared their pasture land for grazing of cattle, and shared other efforts and expenses. However, in April or May of 2004 the parties had a falling out, and all of the cattle were returned to their respective owners. The two gates within the fence line separating the parties' property were closed, and the previous sharing arrangement ceased.

This case involves Goldie and Andi, which are two cows owned by Mr. Lance. It is undisputed that, shortly after the sharing agreement was terminated, Goldie and Andi came into the possession of Ms. Scott and have remained on her property ever since. On November 16, 2005, Mr. Lance filed a complaint in replevin against Ms. Scott in Polk

County District Court, alleging that Ms. Scott had wrongfully converted the two cows to her possession, and had wrongfully sold the cows' offspring for profit. As a result of Ms. Scott's wrongful conversion and sales of the offspring, Mr. Lance prayed for a return of the two cows and damages. On January 27, 2006, Ms. Scott filed an answer and counterclaim, admitting to a consensual possession of the cows. She requested damages as a result of her feeding the two animals, vaccinating and worming the cows, providing the use of her bull for breeding service, and repairing the fence to prevent Mr. Lance's other cows from grazing on her property.

A hearing was held before the district court on October 16, 2006. The district court entered an order on October 26, 2006, finding that neither party was entitled to damages but that Mr. Lance was entitled to the return of his two cows. Mr. Lance timely appealed the decision of the district court to Polk County Circuit Court on November 13, 2006.

A hearing was held before the circuit court on May 23, 2007. On June 4, 2007, the circuit court entered an order that in pertinent part, provides:

1. The parties hereto had a sharing arrangement prior to the spring of 2004 whereby the parties shared their pasture land for the grazing of cattle and shared other efforts and expenses. Neither party is entitled to reimbursement for any expenses or services for the period up to the spring of 2004. After the sharing arrangement ended, two cows remained on the property of the Defendant. The Defendant makes claim for expenses incurred with the raising of offspring from the two cows and from the feeding and maintenance of the two cows up to the date of the hearing. The Plaintiff makes claim for the value of the offspring generated by the two cows for the years 2004 through 2007 to the date of this hearing. The court finds that it is difficult to determine the exact expenses incurred by the Defendant as some of those expenses were incurred prior to the end of the sharing relationship. However, the court does know and consider that the Defendant incurred costs and expenses in the keeping and maintaining of the two cows and the offspring.

The court determines that the Plaintiff is not entitled to any monies for the offspring generated by his two cows, and the court finds that the Defendant is not entitled to any monies for the expenses incurred. Thus, the court finds that these two claims are approximately equal.

2. The court finds that the Plaintiff is entitled to the return of his two cows and the most recent offspring of one of the cows. The Defendant is to engage someone to return the Plaintiff's two cows and the one calf to the Plaintiff's property. The Plaintiff is to pay the cost of the person hired to move the cattle.

Mr. Lance now appeals to this court from the order of the Polk County Circuit Court.

Mr. Lance raises two points in this appeal. First, he argues that the circuit court erred in giving credit to Ms. Scott for keeping his two cows without there being sufficient evidence to determine her level of expenses. Mr. Lance next contends that the trial court erred in failing to award him money damages for the conversion and sale of the offspring produced by his two cows. We affirm the decision of the circuit court.

In bench trials, the standard of review on appeal is whether the judge's findings were clearly erroneous or clearly against the preponderance of the evidence. *Neal v. Hollingsworth*, 338 Ark. 251, 992 S.W.2d 771 (1999). A finding is clearly erroneous when, although there is evidence to support it, the reviewing court, when considering all of the evidence, is left with a definite and firm conviction that a mistake has been committed. *Id.* This court views the evidence in a light most favorable to the appellee, resolving all inferences in favor of the appellee. *Arkansas Transit Homes, Inc. v. Aetna & Cas.*, 341 Ark. 317, 16 S.W.3d 545 (2000). Disputed facts and determinations of the credibility of witnesses are within the province of the fact finder. *Ford Motor Credit Co. v. Ellison*, 334 Ark. 357, 974 S.W.2d 464 (1998).

Mr. Lance testified at the hearing before the circuit court. He stated that, at the time his relationship with Ms. Scott deteriorated in the spring of 2004, each of them had about 20 to 25 head of cattle that were returned to their respective properties. However, according to Mr. Lance, Ms. Scott thereafter opened one of the gates and turned two cows (Goldie and Andi) back onto her property.

Mr. Lance testified that over the next few years Goldie and Andi calved, and Ms. Scott received most of the proceeds. He stated that in 2004, she sold two calves for \$450 each, and that she paid him for one of the calves but stopped payment on the other check. In 2005, there were two more offspring that were sold for about \$627 each, and Ms. Scott kept the proceeds. In 2006, there were two more calves from these cows in which Mr. Lance claimed an interest. Mr. Lance estimated that the proceeds retained by Ms. Scott for the five calves totaled \$2958, for which he requested judgment.

Ms. Scott testified on her own behalf, and acknowledged that she has retained possession of Goldie and Andi since the spring of 2004, but denied opening the gate and procuring the cows onto her property. She testified that she thought that Mr. Lance returned the cows to her property, and that he has never since made any effort to retrieve them. Ms. Scott stated that there was something special about Goldie and Andi, and that she viewed them as pets. Since the spring of 2004, Ms. Scott has fed and taken care of the two cows and their offspring with no help from Mr. Lance.

Ms. Scott testified that her bull has serviced the two cows with no compensation from Mr. Lance. She further stated that during her possession she has spent about \$875 feeding

the cows. Ms. Scott alleged that some of Mr. Lance's other cows entered her property and fed on her hay, causing her to repair the fence and incur \$1142 in damages. Ms. Scott also stated that she vaccinated and wormed the cows at an expense of \$142.

With respect to the sale of the calves, Ms. Scott disputed Mr. Lance's account regarding the two calves sold in 2004. She maintained that she did stop payment on one of the \$450 checks, but only after she mailed it to Mr. Lance and three or four months passed. Ms. Scott testified that she reissued another check, which Mr. Lance again did not cash, and then she tendered the money. Ms. Scott acknowledged selling two calves in 2005 for about \$656 and \$490. She stated that two more calves were born in 2006 that are still on her property, and that Andi has since had another calf.

On appeal from the circuit court's order that returned the two cows to Mr. Lance but failed to award damages, Mr. Lance argues that there was insufficient evidence of the expenses incurred by Ms. Scott. As such, he contends that he should have been awarded all of his claimed damages for conversion of the offspring. Mr. Lance notes that the circuit court's order recites that it is difficult to determine the exact expenses incurred by Ms. Scott as some of the expenses were incurred prior to the end of the sharing relationship, and yet the court made a determination that the parties' claims were approximately equal. Mr. Lance submits that the damages presented by Ms. Scott were dubious at best, and argues that there was no factual basis upon which to calculate her expenses. That being the case, Mr. Lance argues that the trial court should have awarded him damages of around \$2900 for five of the offspring that were sold by Ms. Scott.

Given the proof presented and the lack of citations of authority, we cannot say that the trial court clearly erred in declining to award Mr. Lance damages for the conversion of his cows' offspring. Therefore, we affirm the trial court's decision.

Conversion is a common-law tort action for the wrongful possession or disposition of another's property. *Buck v. Gillham*, 80 Ark. App. 375, 96 S.W.3d 750 (2003). The tort of conversion is committed when a party wrongfully commits a distinct act of dominion over the property of another which is inconsistent with the owners' rights. *Dillard v. Wade*, 74 Ark. App. 38, 45 S.W.3d 848 (2001). The intent required is not conscious wrongdoing but rather an intent to exercise dominion or control over the goods that is in fact inconsistent with the plaintiff's rights. *Grayson v. Bank of Little Rock*, 334 Ark. 180, 971 S.W.2d 788 (1998). The conversion need not be a manual taking or for the defendant's use. *Buck v. Gillham*, *supra*. The proper measure of damages for conversion of property is the market value of the property at the time and place of the conversion. *Hatchell v. Wren*, 363 Ark. 107, 211 S.W.3d 516 (2005).

Under these standards, the circuit court properly ordered the return of two cows that had been converted to Ms. Scott's possession. However, contrary to appellant's argument, the trial court did not err in refusing to award damages for the offspring produced during Ms. Scott's control of the cows. During this time, there is no evidence that the cows would have been bred but for the cows' presence on Ms. Scott's property and the servicing of her bull. Indeed, the testimony showed that prior to the spring of 2004 Mr. Lance had been using Ms. Scott's bull to breed his cattle. And during this time, Ms. Scott fed and cared for

the cows and their offspring, thus relieving Mr. Lance of any responsibilities or expenses related to his cows. While it may be difficult to calculate Ms. Scott's expenses precisely, it cannot be disputed that they were considerable. In this case Mr. Lance was owed either the value of his cows, or the cows themselves, and he was awarded the cows. The trial court further ordered possession of one of the calves to be placed with Mr. Lance, which is not at issue in this appeal. Any further relief in the form of damages was not warranted by the proof, and therefore we hold that the circuit court's decision was not clearly erroneous.

Affirmed.

HART and MILLER, JJ., agree.